

### Expedited Recredit for Consumers – §229.54

1. Determine whether any financial institution customer has raised a Check 21-related claim of loss since the last examination. If yes, review for the following. [In financial institutions where multiple Check 21-related claims have been raised and resolved, the examiner need only review a sampling sufficient to ensure that the bank's processing is consistent and in compliance with Subpart D.]
  - *Necessary pre-conditions – consumer must allege **all** of these* [§229.54(a)(1)-(4)]
    - Was the consumer's account charged for a substitute check *that was provided to the consumer*? [The consumer need not be in possession of the substitute check at the time of claim submission]
    - Was the consumer's account not properly charged? [Alternatively, a consumer's account could be properly charged yet still give rise to a warranty claim, for example, in the case of a substitute check image that is illegible.]
    - Did the consumer suffer a resulting financial loss?
    - Was the production of the original check or a sufficient copy necessary to determine whether or not the consumer's claim was valid?
  - *Procedural steps for consumer's claim*
    - Did the consumer submit a timely claim? [§229.54(b)(1)]
    - Did the claim contain a description of the claim, a statement and estimate of loss, the reason why the original check or a sufficient copy is necessary, and sufficient information for the bank to investigate? [§229.54(b)(2)]
    - If a consumer attempted to make a claim but failed to provide all of the necessary information (as listed above), did the bank inform the consumer that the claim was incomplete and identify the information that was missing? [§229.54(b)(2)(D)(ii)]
    - Was the claim submitted in a form acceptable to the financial institution? Did the bank compute the time for action accurately? [§229.54(b)(3)]
  - *Procedural steps for financial institution response*  
If the financial institution concluded that (1) all necessary prerequisites to the filing of a consumer claim existed; and (2) that the consumer followed the appropriate steps in filing the claim, verify that the bank provided the following appropriate response:  
*Claim deemed **valid**:*  
In the event of a valid consumer claim, did the bank
    - Recredit the account for the amount of the loss, up to the amount of the substitute check (plus interest, if applicable), no later than the end of the business day

after the banking day on which the bank made its determination [§229.54(c)(1)(i)];

- Draft a notice of recredit stating (1) the amount of the recredit, (2) the date on which funds will be available for withdrawal [§229.54(e)(1)(i) and (ii)]; and
- Send the notice no later than the business day after the banking day on which the bank recredit occurs? [§229.54(e)(1)]

#### *Claim deemed **invalid**:*

In the event of an invalid consumer claim, determine whether the bank

- Sent a notice stating that the claim was invalid and include the original check or a sufficient copy [§229.54(e)(2)(i)];
- Demonstrated to the consumer that the substitute check was properly charged (or that the consumer's warranty claim is not valid) [§229.54(e)(2)(ii)]; and
- Included the information or documents (in addition to the original check), if any, relied upon by the bank in making its determination (or a statement that the consumer may request such) [§229.54(e)(2)(iii)].

#### *Claim **not resolved** within initial 10 days, pending further investigation:*

If the bank could not resolve the claim before the end of the 10th business day after the banking day on which the bank received the claim, determine whether the bank

- Recredited the consumer's account for the amount of the loss, up to the lesser of the amount of the substitute check or \$2,500 (plus interest, if applicable) [§229.54(c)(3)(i)(A)];
- Drafted a notice of recredit stating (1) the amount of the recredit, (2) the date on which funds will be available for withdrawal; [§229.54(e)(1)(i) and (ii)]
- Recredited the consumer's account for the remaining amount of the loss, if any, up to the amount of the substitute check (plus interest, if applicable), no later than the end of the 45th calendar day after the banking day on which the bank received the claim [§229.54(c)(3)(ii)]; and
- Sent the notice of recredit no later than the business day after the banking day on which the bank recredit occurs. [§229.54(e)(1)]

#### *Claim resulting in **reversal of recredit**:*

In some instances it may be necessary for a bank to reverse a recredit made previously to a consumer's account (plus any interest paid, if applicable). If such a circumstance has occurred, determine whether the bank

- Concluded that the consumer's claim was not valid [§229.54(c)(4)(i)];
- Drafted a notice of reversal of recredit [§229.54(e)(3)], accompanied by the following:
  - The original check or a sufficient copy [§229.54(e)(2)(i)];
  - Information or explanation to demonstrate to the consumer that the substitute check was properly charged (or that the consumer's warranty claim is not valid) [§229.54(e)(2)(ii)];
  - Information or documents (in addition to the original check or a sufficient copy), if any, on which the bank relied in making its determination (or a statement that the consumer can request such) [§229.54(e)(2)(iii)];
  - A description of the amount of the reversal, including both the amount of the recredit and the amount of interest paid on the recredited amount, if any, being reversed [§229.54(e)(3)(i)]; and
  - The date on which the bank made the reversal [§229.54(e)(3)(ii)].
- Sent the notice no later than the business day after the banking day on which the bank made the reversal [§229.54(e)(3)].
- *Availability of recredited funds*  
Under circumstances detailed above, where the financial institution determined that it was appropriate to recredit its consumer customer's account, determine whether the bank took the following actions:
  - Next day availability – Did the bank make any recredited amount available for withdrawal no later than the start of the business day after the banking day on which the recredit was provided? [§229.54(d)(1)]
  - Safeguard exceptions – If necessary for reasons of (1) new account status, (2) overdrawn account status, or (3) well-reasoned suspicion of fraud, did the bank invoke its right to delay immediate availability of recredited funds? If so, was the delay invoked because the bank had not yet determined the validity of the claim? Were the funds made available no later than the business day after the banking day on which the final determination was made **OR** the 45th calendar day after the bank received the claim, whichever occurred earlier? [§229.54(d)(2)]
  - Overdraft fees – If the bank chose to invoke its right to delay immediate availability of recredited funds, did it refrain from imposing an overdraft fee until the appropriate five-day period had elapsed? [§229.54(d)(3)]

## References

*Expedited Funds Availability Act*

<http://www.fdic.gov/regulations/laws/rules/6500-3240.html#6500ceb602>

*Part 229: Availability of Funds and Collection of Checks (FRB Regulation CC)*

<http://www.fdic.gov/regulations/laws/rules/6500-3210.html>

*FIL 116-2004: Final Amendments to the Federal Reserve Board's Regulation CC*

<http://www.fdic.gov/news/news/financial/2004/fil11604.html>

*FIL 54-2004 Check Clearing for the 21st Century Act*

<http://www.fdic.gov/news/news/financial/2004/fil5404.html>

*FIL 28-97: Availability of Funds and Collection of Checks*

<http://www.fdic.gov/news/news/financial/1997/fil9728.html>

*FIL 67-96: Delayed Availability of Funds*

<http://www.fdic.gov/news/news/financial/1996/fil9667.html>

## Job Aids

### Check 21

The FDIC along with the other FFIEC member agencies has developed a computer based training package that may be used to gain familiarity with the Check 21.

This "InfoBase" is accessible through the following link to the FFIEC website: <http://www.ffiec.gov/exam/check21/default.htm>. It features a 30 minute audio slide presentation, frequently asked questions, and links to other resources. The slide presentation includes discussion about the examination procedures that the FDIC and other FFIEC agencies will use to evaluate compliance with Check 21.

### Specific Types of Check Schedules

The flow charts on the following pages detail applicable availability schedules for deposits.

**Case-By-Case Hold** - The time frames listed in the flow charts are the maximum amounts of time that a bank may delay the availability of a deposit. Most banks have a policy of making funds from deposits available sooner than the time periods allowed by the regulation. These banks may, on a case-by-case basis, delay the availability of funds up to the time frames established by the regulation (those shown in the flow charts). When a bank imposes a case-by-case hold, a written notice including the following information must be given to the depositor: